

5422

JS 44C/SDNY  
REV. 12/2005

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

## DEFENDANTS

Diego Santiago

The Village of Ossining Police Department

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

David J. Hernandez & Assoc. 26 Court Street, Suite 2200, Brooklyn NY  
CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (1124)

1981 of the Civil Rights Law - Racial Discrimination in Employment

Has this or a similar case been previously filed in SDNY at any time? No  Yes?  Judge Previously AssignedIf yes, was this case Vol  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

## (PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT LIABILITY	[ ] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT
[ ] 130 MILLER ACT	[ ] 320 ASSAULT, LIBEL & SLANDER	[ ] 625 DRUG RELATED PERSONAL INJURY	[ ] 1423 WITHDRAWAL	[ ] 410 ANTITRUST
[ ] 140 NEGOTIABLE INSTRUMENT	[ ] 330 FEDERAL EMPLOYERS' LIABILITY	PROPERTY	28 USC 157	[ ] 430 BANKS & BANKING
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[ ] 340 MARINE	21 USC 881		[ ] 450 COMMERCE/ICC RATES/ETC
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT LIABILITY			[ ] 460 DEPORTATION
[ ] 152 RECOVERY OF DEFECTED STUDENT LOANS (EXCL VETERANS)	[ ] 350 MOTOR VEHICLE	[ ] 362 PERSONAL INJURY - MED MALPRACTICE	[ ] 820 COPYRIGHTS	[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 365 PERSONAL INJURY - PRODUCT LIABILITY	[ ] 830 PATENT	[ ] 480 CONSUMER CREDIT
[ ] 160 STOCKHOLDERS SUITS	[ ] 360 OTHER PERSONAL INJURY	[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT	[ ] 840 TRADEMARK	[ ] 490 CABLE/SATELLITE TV
[ ] 190 OTHER CONTRACT		[ ] 370 OTHER FRAUD		[ ] 810 SELECTIVE SERVICE
[ ] 195 CONTRACT PRODUCT LIABILITY		[ ] 371 TRUTH IN LENDING		[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
[ ] 196 FRANCHISE		[ ] 380 OTHER PERSONAL PROPERTY DAMAGE		[ ] 875 CUSTOMER CHALLENGE
		[ ] 385 PROPERTY DAMAGE		12 USC 3410
	ACTIONS UNDER STATUTES	PRODUCT LIABILITY	[ ] 710 FAIR LABOR STANDARDS ACT	[ ] 891 AGRICULTURE ACTS
REAL PROPERTY	CIVIL RIGHTS		[ ] 720 LABOR/MGMT RELATIONS	[ ] 892 ECONOMIC STABILIZATION ACT
[ ] 210 LAND CONDEMNATION	[ ] 441 VOTING	[ ] 510 MOTIONS TO VACATE SENTENCE	[ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	[ ] 893 ENVIRONMENTAL MATTERS
[ ] 220 FORECLOSURE	[ ] 442 EMPLOYMENT	20 USC 2255	[ ] 740 RAILWAY LABOR ACT	[ ] 894 ENERGY ALLOCATION ACT
[ ] 230 RENT LEASE & EJECTMENT	[ ] 443 HOUSING ACCOMMODATIONS	[ ] 530 HABEAS CORPUS	FEDERAL TAX SUITS	[ ] 895 FREEDOM OF INFORMATION ACT
[ ] 240 TORTS TO LAND	[ ] 444 WELFARE	[ ] 535 DEATH PENALTY	[ ] 790 OTHER LABOR	[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[ ] 246 TORT PRODUCT LIABILITY	[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	[ ] 540 MANDAMUS & OTHER CIVIL RIGHTS	LITIGATION	[ ] 950 CONSTITUTIONALITY OF STATE STATUTES
[ ] 290 ALL OTHER REAL PROPERTY	[ ] 446 AMERICANS WITH DISABILITIES - OTHER	[ ] 550 PRISON CONDITION	EMPL RET INC	[ ] 890 OTHER STATUTORY ACTIONS
	[ ] 440 OTHER CIVIL RIGHTS		[ ] 791 SECURITY ACT	

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

PLAINTIFF IS A CORPORATION (Y)

## ORIGIN

- 1 Removed from  3 Remanded from  4 Reinstated or  
 State Court Appellate Court Reopened  5 Transferred from  6 Multidistrict  
 Removed from State Court (Specify District) Litigation  7 Appeal to District  
 AND at least one party is a pro se litigant Judge from  
 Magistrate Judge Judgment

DEFENDANT IS A CORPORATION (Y)

## BASIS OF JURISDICTION

- DEFENDANT  3 FEDERAL QUESTION  4 DIVERSITY  
 (U.S. NOT A PARTY)

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Check Plaintiff and one box for Defendant)

DEF	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	<input type="checkbox"/> 3	<input type="checkbox"/> 13	<input type="checkbox"/> 13	<input type="checkbox"/> 5 INCORPORATED <u>and</u> PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
<input type="checkbox"/> 2 INCORPORATED <u>or</u> PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4	<input type="checkbox"/> 14	<input type="checkbox"/> 14	<input type="checkbox"/> 6 FOREIGN NATION

PLAINTIFF ADDRESS AND COUNTY(IES)

13 Vassar Street  
 Ossining, New York 10567

Westchester County

DEFENDANT ADDRESS AND COUNTY(IES)

88 Spring Street  
 Ossining, NY 10562  
 Westchester County

## KNOW

MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE  
 NAME, ADDRESS, AND OTHER INFORMATION OF THE FOLLOWING DEFENDANTS:

Defendant's Name

WOULD BE ASSIGNED TO:  WHITE PLAINS  FOLEY SQUARE  
 (Check box if this a PRISONER PETITION.)

## ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

 NO YES (DATE ADMITTED Mo. 1 Yr. 88)  
 Attorney Bar Code # 2126272

Designated by the Clerk of the Court.

is so Designated.

Signed in Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

CLERK'S COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DIEGO SANTIAGO,

Plaintiff,

**SUMMONS IN A CIVIL ACTIONS**

-against-

THE VILLAGE OF OSSINING POLICE DEPARTMENT,

Defendant.

TO:

THE VILLAGE OF OSSINING POLICE DEPARTMENT  
88 Spring Street  
Ossining, NY 10562

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

DAVID J. HERNANDEZ & ASSOCIATES  
26 COURT STREET, SUITE 2200  
BROOKLYN, NY 11242

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment will be taken against you for the relief demanded in the complaint.

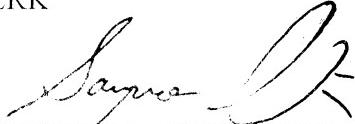
DATED: Brooklyn, New York  
July 5, 2006

**J. MICHAEL McMAHON**

CLERK

DATE

BY DEPUTY CLERK



## RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

*Check one box below to indicate appropriate method of service*

- Served personally upon the defendant. Place where served: \_\_\_\_\_
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
- Returned unexecuted: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

## STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
*Date* \_\_\_\_\_ *Signature of Server* \_\_\_\_\_

*Address of Server* \_\_\_\_\_

<sup>1</sup>) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----  
DIEGO SANTIAGO,

06 CV 5422

Civil Action No.

Plaintiff,

-against-

THE VILLAGE OF OSSINING POLICE DEPARTMENT,

COMPLAINT AND  
JURY TRIAL DEMAND

KMW  
"ECC CASE"

Defendant.

-----X

Plaintiff, DIEGO SANTIAGO, by his attorneys, DAVID J. HERNANDEZ & ASSOCIATES, complaining of the Defendant, THE VILLAGE OF OSSINING POLICE DEPARTMENT, respectfully alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for discrimination based on race and/or national origin in the terms, conditions, and privileges of employment, as protected under section 1981 of the Civil Rights Act of 1866, 42 U.S.C. section 1981 (1982) ("Section 1981"); as well as retaliation for engaging in protected activity; discrimination under the New York State Humans Rights Law, Executive Law sections 290 *et seq.* (the "Code"), based on race and/or national origin and retaliation for engaging in protected activity.
2. Plaintiff also seeks costs and attorneys fees authorized by 42 U.S.C. section 1981 and other relevant statutes.

## **JURISDICTION AND VENUE**

3. This Court has Jurisdiction over this action under 42 U.S.C. section 1981, 42 U.S.C. section 2000e-5(f) and 28 U.S.C.A. sections 1331 and 1343(4).
4. Supplemental jurisdiction of the Court over the state claims brought under the New York Human Rights Law, is based on 28 U.S.C. section 1367(a).
5. The unlawful employment practices alleged below were committed within the Southern District. Moreover, Plaintiff resides in Westchester County. Accordingly, venue lies within the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. section 1391(b). Pendent Jurisdiction is also invoked pursuant to Executive Law section 296 (1) (a).
6. Plaintiff filed a timely charge of race discrimination with the Equal Employment Opportunity Commission and brings this action within ninety (90) days of the receipt of a Notice of Right To Sue, issued by the EEOC on April 21, 2006, a copy of which is attached hereto as Exhibit "A".

## **PARTIES**

7. At all times herein mentioned, Plaintiff DIEGO SANTIAGO (hereinafter "Plaintiff" or "Santiago") was and still is a resident of Westchester County, State of New York.
8. At all times hereinafter mentioned, Plaintiff, Diego Santiago, is a Hispanic male and has been employed as a Police Officer with the Village of Ossining Police

Department (hereinafter "Defendant") since July of 1982. Defendant, The Village of Ossining Police Department is an employer within the meaning of 42 U.S.C.A. section 2000e(b). This is an action to remedy violations of the rights and racial discrimination of Diego Santiago under 42 U.S.C.A. section 1983, Violation of the Civil Rights Act of 1964.

### **FACTS**

9. Plaintiff, Diego Santiago, is a Hispanic male, who was born on 11/13/1954 in Puerto Rico.
10. During Plaintiff's employment at The Village of Ossining Police Department, his work performance, time and attendance were satisfactory or better. Plaintiff has an excellent attendance record and has had good performance reviews throughout his employment.
11. Plaintiff, Diego Santiago has applied for the position of Detective with the Village of Ossining Police Department in 2001, 2002, 2003 and 2004 but was denied said position due to his race and ethnicity.
12. Plaintiff, Diego Santiago, has been employed for a longer period of time with the Village of Ossining Police Department than all but two of the Detectives who are currently employed by defendants, and is routinely called upon to translate between Spanish and English because there is no Detective who is certified to translate.
13. When Plaintiff, Diego Santiago, showed his intent and interest to be promoted to Detective, there were no employees above the rank of Police Officer who were Hispanic and speak Spanish within the Village of Ossining Police Department.

14. As a proximate result of defendants' racial discrimination against plaintiff, plaintiff has suffered and continues to suffer substantial losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.
15. As a further proximate result of defendant's actions, plaintiff has suffered and continues to suffer impairment and damage to plaintiff's good name and reputation.
16. As a further proximate result of defendants' actions, plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.
17. The conduct of defendants was outrageous and malicious, was intended to injure plaintiff, and was done with reckless indifference to plaintiff's protected civil rights, entitling plaintiff to an award of punitive damages.

**AS FOR A FIRST CAUSE OF ACTION: 42 U.S.C. section 1981**

18. Plaintiff repeats and re-avers each and every one of the allegations set forth in paragraphs 1 through 17 of this Complaint with the same force and effect as if each were fully set forth herein.
19. Plaintiff is a Hispanic male, born in Puerto Rico, and as such, he is a member of a class of persons covered by and protected by 42 U.S.C. section 1981.
20. On January 4, 2003, Plaintiff received a awards application from Sergeant William Kress, commending him for his service.

21. On October 28, 2003, a article was posted in the Village of Ossining Police Department locker room referring to Plaintiff as a "Scab". (See attached Exhibit "B").
22. In retaliation for Plaintiff's engagement in protected activity and on account of his race/ethnicity, plaintiff was isolated and shunned by the Village of Ossining Police Department and denied the position of Detective.

**AS FOR A SECOND CAUSE OF ACTION: HUMAN RIGHT LAW**

23. Plaintiff repeats and re-avers each and every one of the allegations set forth in paragraphs 1 through 22 of this Complaint with the same force and effect as if each were fully set forth herein.
24. Plaintiff is a Hispanic male, born in Puerto Rico, and as such, he is a member of a class of persons covered by and protected by 42 U.S.C. section 1981.
25. On January 4, 2003, Plaintiff received a awards application from Sergeant William Kress, commending him for his service.
26. On October 28, 2003, a article was posted in the Village of Ossining Police Department locker room referring to Plaintiff as a "Scab". (See attached Exhibit "B").
27. In retaliation for Plaintiff's engagement in protected activity and on account of his race/ethnicity, plaintiff was isolated and shunned by the Village of Ossining Police Department and denied the position of Detective

**AS FOR A THIRD CAUSE OF ACTION: HUMAN RIGHT LAW**

28. Plaintiff repeats and re-avers each and every one of the allegations set forth in paragraphs 1 through 27 of this Complaint with the same force and effect as if each were fully set forth herein.
29. Plaintiff is a Hispanic male, born in Puerto Rico, and as such, he is a member of a class of persons covered by and protected by 42 U.S.C. section 1981.
30. On January 4, 2003, Plaintiff received a awards application from Sergeant William Kress, commanding him for his service.
31. On October 28, 2003, a article was posted in the Village of Ossining Police Department locker room referring to Plaintiff as a "Scab". (See attached Exhibit "B").
32. In retaliation for Plaintiff's engagement in protected activity and on account of his race/ethnicity, plaintiff was isolated and shunned by the Village of Ossining Police Department and denied the position of Detective

**DAMAGES AND PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Court grant judgment to him containing the following relief:

1. A declaratory judgment that Defendant, THE VILLAGE OF OSSINING POLICE DEPARTMENT, and/or its agents, servants or employees, discriminated against Plaintiff in violation of 42 U.S.C. sections 1981, the New York State Human Rights Law section 290 et seq., on the basis of race/national origin, and in retaliation for engaging in protected activity.

2. Injunctive relief permanently restraining and enjoining Defendants, THE VILLAGE OF OSSINING POLICE DEPARTMENT, from making employment decisions on the basis of race/national origin, of its employees and monitoring the Defendants employment practices as they relate to retaliation.
3. An award of plaintiff's actual damages in an amount not less than \$1,000,000.00 to be determined at trial for loss of wages, benefits, and promotional opportunities, including an award of front pay compensating plaintiff for loss of future salary and benefits;
4. An award of plaintiff's actual damages in an amount not less than \$1,000,000.00 to be determined at trial to compensate plaintiff for mental anguish, humiliation, embarrassment, and emotional injury;
5. An award of punitive damages;
6. An order enjoining defendant from engaging in the wrongful practices alleged herein;
7. An award of reasonable attorneys' fees and the costs of this action; and
8. Such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a jury of six persons for all claims stated herein.

Dated: Brooklyn, New York  
July 5, 2006

DAVID J. HERNANDEZ & ASSOCIATES  
By: \_\_\_\_\_  
David J. Hernandez, Esq. ID# 8401

A Member of the Firm  
Attorney of plaintiff  
26 Court Street, Suite 2200  
Brooklyn, NY 11242  
(718) 522-0009

**VERIFICATION**

STATE OF NEW YORK )  
                        )  
                        )      SS.:  
COUNTY OF KINGS     )

DIEGO SANTIAGO, being duly sworn, deposes and says:

1. I am the Plaintiff in this action.
2. I have read the foregoing COMPLAINT AND JURY TRIAL DEMAND in this matter and know the contents thereof.
3. The same are true to the best of our knowledge and information except as to those matters stated therein to be alleged upon information and belief, and as to those matters, your deponent believes them to be true.

  
Diego Santiago  
DIEGO SANTIAGO

Sworn to before me this  
5<sup>th</sup> day of July, 2006

  
\_\_\_\_\_  
NOTARY PUBLIC

ALEXANDER KRAN III  
NOTARY PUBLIC, State Of New York  
No. 81-5015643  
Qualified in New York County FC  
Commission Expires March 5, 2008

**EXHIBIT A**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Boston Area Office**

John F. Kennedy Federal Building  
Government Center  
Fourth Floor, Room 475  
Boston, MA 02203  
(617) 565-3200  
TTY (617) 565-3204  
FAX (617) 565-3196

**APR 21 2006**

Diego Santiago  
13 Van Wyck Street  
Ossining, NY 10562

Re: Charge No. 160-2005-01180, Diego Santiago v Ossining Police Department

Dear Mr. Santiago :

The EEOC has concluded its inquiry into your allegations of discrimination. Under the Equal Employment Opportunity Commission's (EEOC) charge prioritization procedures, we focus our resources only on those charges that are most likely to result in findings of violations of the laws we enforce. In accordance with these procedures, the EEOC has evaluated this charge based on the evidence you and the Respondent provided. The evidence fails to indicate that a violation of the law occurred and it is not likely that additional investigation will result in our finding of a violation.

You allege that because of your race, Hispanic, and ethnicity, Puerto Rican, you were denied promotion to the position of Detective for the years 2001, 2002, 2003, and 2004. You state that there are no employees above the rank of Officer who are Hispanic, who speak Spanish, and who know the Hispanic community. A subsequent allegation states a Spanish speaker above the rank of Officer was promoted in response to your charge.

The jurisdictional time period for filing a charge is 300 days from the date of harm. Your charge was received February 18, 2005. Consequently, the alleged discrimination prior to April 24, 2004 is not jurisdictional.

Historically, evidence indicates the following regarding the four years that you cite being denied promotion to detective. In the year 2001 no one was appointed. In the year 2002 Jose Ferrao, a Brazilian, Latino, rated second but received the appointment. He was appointed over the individual, a non Latino, who received the highest rating. In the year 2003 no one was appointed.

July 2004 Donald Farrell, who had rated highest in 2002, above Mr. Ferrao, was appointed detective. Of the 12 applicants identified for the 2004 position, 6 were white, including the successful candidate, 2 were black, and 2, including yourself, were Hispanic/Latino. The

Page 2. #160-2005-01180

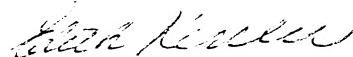
process includes input from all sergeants and lieutenants who complete a prescribed evaluation form of approximately 25 criteria regarding all candidates. That input is reviewed and destroyed as noted on the form. The Chief then takes into account the input of the Lieutenant in charge of the Detective division. The ability to speak Spanish is not a criterion of the position. Chief Burton states that openings for detective are infrequent and in the 13 years he has been Chief of police he has appointed only three plainclothes detectives one of whom was Hispanic/Latino. The decision makers were the same.

The promotion of a Spanish speaking Hispanic was effected prior to the time Respondent was notified of your charge. Sgt. George/Jorge Byrne, a Hispanic Mexican, who speaks Spanish, was promoted to the position of sergeant, a position that is higher than that of detective. He was promoted February 16, 2005. Your charge was received by the Commission Friday February 18, 2005. EEOC mailed notification of your charge to Respondent on February 23, 2005. Byrne was not promoted in response to your charge. Regarding the appointments to detective in 2001 of Girolamo and 2004 of Stymiloski, each was promoted within the position he was already functioning, doing specific duties, i.e. youth officer and traffic manager.

Of 59 police officers, 7 (11.86%) are Hispanic or Latino. Of the 7 detectives, one (14.3%) is a Brazilian/Latino. Of 8 Sergeants 1 (12.5%) is Hispanic or Latino. There is no indication that your race or ethnicity were applicable to any action taken by Respondent. There is no indication that there is a violation of any of the laws enforced by EEOC.

Given the Respondent's answer to the charge, even though you disagree with them, it is unlikely that EEOC would find a violation if it invested additional resources. Thus, the investigation has been concluded. Your Determination /Notice of Right to Sue is enclosed. The Determination is final. If you wish to pursue this charge, you may file in Federal District Court within ninety (90) days of receipt of the enclosed Notice of Right to Sue. Otherwise, your right to sue will be lost.

Sincerely,



Edith Kessler  
Investigator

cc: Tara Bernstein, Esq.

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Diego**  
**13 Victoria Street**  
**Ossining, NY 10562**

From: **Boston Area Office - 523**  
**John F. Kennedy Fed Bldg**  
**Government Ctr, Room 475**  
**Boston, MA 02203**



*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

**160-2005-01180**

**Edith Kessler,  
Investigator**

**(617) 565-3206**

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- While reasonable efforts were made to locate you, we were not able to do so.
- You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

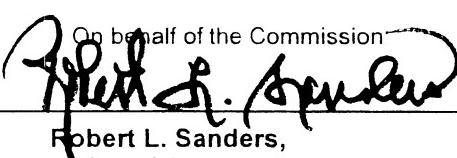
## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

Enclosures(s)

On behalf of the Commission  
  
**Robert L. Sanders,**  
**Area Director**

APR 21 2006

(Date Mailed)

cc: **Stephen A. Fuchs, Esq.  
Grotta, Glassman & Hoffman, P.C.  
650 Fifth Avenue  
New York, NY 10019**

**Tara Bernstein, Esq.  
9 PARADIES LANE  
New Paltz, NY 12561**



Postscript  
Gutiérrez  
Letter 0502  
10/28/02 - 7 AM 2002



## Residents rally to have Hispanic Ossining police officer become detective

by Adam Stone

A cross-section of roughly 60 Ossining residents has signed a petition that encourages the Police Department to appoint Officer Diego Santiago to detective.

Many petitioners contend Santiago has been unfairly passed up for the position because he is Hispanic. The officer of 22 years in the department was unavailable for comment.

"Any appointment is based on merit," Chief Joseph Burton said. "I'll see what their concerns are, but we meet those concerns." Currently, there are no openings for a detective appointment, Burton said.

Resident Maxine Lawrence issued the petition to the Board of Police Commissioners by Adam Stone

A cross-section of roughly 60 Ossining residents has signed a petition that encourages the Police Department to appoint Officer Diego Santiago to detective.

Many petitioners contend Santiago has been unfairly passed up for the position because he is Hispanic. The officer of 22 years in the department was unavailable for comment.

"Any appointment is based on merit," Chief Joseph Burton said. "I'll see what their concerns are, but we meet those concerns." Currently, there are no openings for a detective appointment, Burton said.

Resident Maxine Lawrence issued the

a little over two weeks ago. Mayor John Penillo rejected the notion that racial diversity within the department should be a focus. "We went to do things for the right reasons," Penillo said.

Sundiala Sadiq was president of the Ossining NAACP when he called for the reorganization of a department detective. He detective was quoted in a newspaper using a racial slur in reference to an African-American officer back in 1996.

"I believe Diego based on the racist history of the Ossining Police has been passed over because of his race," Sadiq said. "Santiago is a victim of the historically racist Ossining Police Department."

Others cite more subtle discrimination within the department. "Not qualified?" Lawrence asked rhetorically. "Not one of that inasmuch as there has been bias and discrimination...over the years."

In his dozen years as chief, Burton has only appointed two detectives.

Interestingly, in

the same year, Detective Jose Ferrao, who is

Hispanic, was picked for the position,

who does not speak Spanish, was plucked

from the ranks after a review process that

included more than a dozen interested parties,

including Santiago.

"Hopefully, we've gone beyond skin

color," said Burton, noting four lieutenants

and seven sergeants were involved in the eval-

"Not qualified?" Lawrence asked rhetorically. "Not one of that inasmuch as there has been bias and discrimination...over the years."

Others who signed the petition focused their arguments less on race, and more on the necessity for the department to offer the position to a well-respected officer who speaks Spanish.

Cecilia Gutiérrez is the president of the Ossining Hispanic Action Coalition.

"He is a classic example of police-community relations," Gutiérrez said. "Officer Santiago has been involved with just about every community activity in town. He is widely recognized by everyone in town from every cultural background. He has been an instrumental force in communication between the police and the Spanish community."

## Police union steps into national ranks

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DIEGO SANTIAGO,

ULCV 5422

Plaintiff,

KMW

-against

THE VILLAGE OF OSSINING POLICE DEPARTMENT,

"ECF CASE

Defendants.

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SUMMONS & COMPLAINT

DAVID J. HERNANDEZ & ASSOCIATES  
Attorney for Plaintiff  
26 Court Street, Suite 2200  
Brooklyn, New York 11242  
(718) 522-0009

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service of a copy of the within is hereby admitted.

Dated:

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Attorney for

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Attorneys for Plaintiff